MONTANA LEGISLATIVE HISTORY

Chapter 512 19 97

Bill H 100 S _____ Original bill & history ✓ C

H. Committee on Corrections Select			S. Committee on Finance & Claims		
Hearing Date(s)	Jan 29	✓ C	Hearing Date(s)	Mar 18	✓ C
	Mar 02	✓ C		Mar 19	✓ C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

S. Judiciary

Mar 26

Mar 27

1997 LEGISLATIVE HISTORY

The 1997 Montana Legislature has dramatically changed the nature of the legislative minutes. Specifically, the minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are somewhat fuller in content. Exhibits available from the State Law Library (which may include written statements, attendant information, roll call votes, roll call attendance, a list of public members present, specific action taken on legislative bills, etc.) are included with this request. For information on other exhibits, contact the Montana Historical Society Archives at 444-4774. Exhibits may also be purchased on a CD-ROM from the Montana Legislative Council (444-3064).

Just as in the 1995 legislative session, the House and Senate hearings were recorded. The Historical Society is the depository for the tapes. For information on accessing the tapes, call the archives at 444-4774.

If you have concerns over the format of the 1997 legislative minutes, it is suggested that you contact your state legislators.

HOUSE BILL NO. 100

INTRODUCED BY SOFT

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PUNISHMENT FOR DRIVING UNDER THE INFLUENCE AND FOR DRIVING WITH AN ALCOHOL CONCENTRATION IN EXCESS OF 0.10; AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving under influence of alcohol or drugs. (1) Except as provided in subsections (8) and (9), a person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a fine of not less than $100 or more than $500. The imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(2) Except as provided in subsection (8), on a second conviction, the person shall be punished by a fine of not less than $300 or more than $500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection (8), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(3) (a) Except as provided in subsection (8), on the third conviction, the person shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year and by a fine of not less than $500 or more than $1,000. Except as provided in subsection (8), notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the imprisonment sentence imposed for a third offense that occurred within 5 years of the first offense may not be suspended.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed

by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(4) (a) On the fourth or subsequent conviction, the person ~~is guilty of a felony offense and~~ shall be punished by imprisonment for a term of not less than ~~1 year~~ 6 months or more than ~~10 years~~ 1 year and by a fine of not less than $1,000 or more than $10,000. ~~Except as provided in subsection (8), notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the~~ The imposition or execution of the ~~first 6 months of the~~ imprisonment sentence imposed for a fourth or subsequent offense may not be suspended. The person is not eligible for parole.

(b) After serving the term of imprisonment imposed under subsection (4)(a), the person shall serve a supervised release term of not less than 1 year or more than 2 years. The release must be supervised by the department of corrections, which may order all or any portion of the supervised release term to be served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation apply to the supervised release.

(c) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of supervised release. Reasonable restrictions or conditions may include:

(i) conditions for supervised release;

(ii) payment of a fine as provided in 46-18-231;

(iii) payment of costs as provided in 46-18-232 and 46-18-233;

(iv) payment of costs of court-appointed counsel as provided in 46-8-113;

(v) community service;

(vi) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the

protection of society; or

(vii) any combination of the restrictions or conditions in subsections (4)(c)(i) through (4)(c)(vi).

(d) If a violation of the restrictions or conditions of the supervised release is established, the court may continue the period of supervised release or may require the defendant to serve the remainder of the supervised release sentence in one of the facilities set forth in subsection (4)(e). The court may credit the remainder of the supervised release or the time to be served in a facility set forth in subsection (4)(e) with all or part of the time already served on supervised release.

(e) The person may not be sentenced to the department of corrections for placement in an appropriate correctional institution or program. The court shall specify one of the following facilities as the place in which the term of imprisonment must be served, except that a prerelease center or boot camp may not be specified without the prior approval of the department of corrections:

(i) a state prison;

(ii) a regional correctional facility;

(iii) a county jail;

(iv) a boot camp;

(v) a prerelease center.

(f) The court shall order a person who is financially able to do so to pay the costs of imprisonment and supervised release under this subsection (4) and of the information course and treatment under subsection (5).

(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of public health and human services, which may include alcohol or drug treatment, or both. Alcohol or drug treatment, or both, must be ordered for a first-time offender upon a finding of chemical dependency made by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. On conviction of a second or subsequent offense under this section, in addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of public health and human services, which must include alcohol or drug treatment, or both. As long as the alcohol information course is approved as provided in this subsection and the treatment is provided by a certified chemical dependency counselor, the defendant may attend the information course

and treatment program of the defendant's choice. The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of corrections. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based upon the determination of one of the counselors. On a second or subsequent conviction, the treatment program must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program. A court or counselor may not require attendance at a self-help program other than at an "open meeting" as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in an alcohol information course or treatment program. If the defendant fails to attend the information course or treatment program, the counselor shall notify the court of the failure.

(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If there has not been an additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then all records and data relating to the prior conviction are confidential criminal justice information, as defined in 44-5-103, and public access to the information may only be obtained by district court order upon good cause shown.

(7) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

(8) The court may order that a term of imprisonment imposed ~~under this section~~ for a first, second, or third offense be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the

defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(9) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or ~~subsequent~~ third offense, the court may order that a term of imprisonment imposed ~~under this section~~ for a first, second, or third offense be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

(10) A court may not defer imposition of sentence under this section."

Section 2. Section 61-8-722, MCA, is amended to read:

"**61-8-722. Penalty for driving with excessive alcohol concentration.** (1) Except as provided in subsection (9), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than $100 or more than $500.

(2) Except as provided in subsection (9), on a second conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than $300 or more than $500.

(3) (a) Except as provided in subsection (9), on a third conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than $500 or more than $1,000.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use,

or other act on which the forfeiture is sought.

(4) (a) On the fourth or subsequent conviction, the person ~~is guilty of a felony offense and~~ shall be punished by imprisonment for a term of not less than ~~1 year~~ 6 months or more than ~~10 years~~ 1 year and by a fine of not less than $1,000 or more than $10,000. ~~Except as provided in subsection (9), notwithstanding any other provision providing for suspension of execution of a sentence imposed under this subsection, the~~ The imposition or execution of the ~~first 6 months of the~~ imprisonment sentence imposed for a fourth or subsequent offense may not be suspended. The person is not eligible for parole.

(b) After serving the term of imprisonment imposed under subsection (4)(a), the person shall serve a supervised release term of not less than 1 year or more than 2 years. The release must be supervised by the department of corrections, which may order all or any portion of the supervised release term to be served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation apply to the supervised release.

(c) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of supervised release. Reasonable restrictions or conditions may include:

(i) conditions for supervised release;

(ii) payment of a fine as provided in 46-18-231;

(iii) payment of costs as provided in 46-18-232 and 46-18-233;

(iv) payment of costs of court-appointed counsel as provided in 46-8-113;

(v) community service;

(vi) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or

(vii) any combination of the restrictions or conditions in subsections (4)(c)(i) through (4)(c)(vi).

(d) If a violation of the restrictions or conditions of the supervised release is established, the court may continue the period of supervised release or may require the defendant to serve the remainder of the supervised release sentence in one of the facilities set forth in subsection (4)(e). The court may credit the remainder of the supervised release or the time to be served in a facility set forth in subsection (4)(e) with all or part of the time already served on supervised release.

(e) The person may not be sentenced to the department of corrections for placement in an appropriate correctional institution or program. The court shall specify one of the following facilities as the place in which the term of imprisonment must be served, except that a prerelease center or boot camp may

not be specified without the prior approval of the department of corrections:

(i) a state prison;

(ii) a regional correctional facility;

(iii) a county jail;

(iv) a boot camp;

(v) a prerelease center.

(f) The court shall order a person who is financially able to do so to pay the costs of imprisonment and supervised release under this subsection (4) and of the information course and treatment under subsection (6).

(5) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and suspension of driver's licenses, apply to any conviction under 61-8-406.

(6) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of public health and human services, which must include alcohol or drug treatment, or both, in accordance with the provisions of 61-8-714. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(7) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If there has not been an additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then all records and data relating to the prior conviction are confidential criminal justice information, as defined in 45-5-103, and public access to the information may only be obtained by district court order upon good cause shown.

(8) For the purpose of calculating subsequent convictions under this section, a conviction for a

violation of 61-8-401 also constitutes a conviction for a violation of 61-8-406.

(9) The court may order that a term of imprisonment imposed ~~under this section~~ for a first, second, or third offense be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(10) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or ~~subsequent~~ third offense, the court may order that a term of imprisonment imposed ~~under this section~~ for a first, second, or third offense be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

(11) A court may not defer imposition of sentence under this section."

NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

-END-

STATE OF MONTANA - FISCAL NOTE

Revised Fiscal Note for HB0100, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
A bill for an act revising the punishment for driving under the influence and for driving with an alcohol concentration in excess of .10 and providing an immediate effective date.

ASSUMPTIONS:
Department of Corrections (DOC):
1. Of the 76 offenders, 48 convicted of fourth offense DUI were sentenced to Women's Correctional Center (WCC) or Montana State Prison (MSP).
2. Currently, the average length of sentence imposed for these offenders was 7.2 years with 1.6 years suspended. Based on DOC statistics that inmates serve an average of 34% of their imposed sentences, these offenders will serve approximately two years in a correctional facility.
3. Offenders under this bill on an average will serve 263 days of their sentences.
4. Average daily cost at MSP including outside medical costs is $44.47. The average daily cost for pre-release is $37.63. The average daily cost for parole is $2.68.
5. It is assumed that inmates are not financially able to contribute toward the costs of imprisonment, supervised release, and treatment.
6. It is assumed this bill would go into effect 7/1/97.
7. It is assumed that for fiscal years 1998 and 1999 there would be 12 admissions per quarter under this offense, each serving an average sentence of 9 months.
8. In fiscal year 1996, 71.4% of the inmates convicted under this offense were released from MSP or WCC to pre-release facilities. The remaining 28.6% were released to parole.
9. It is assumed the recidivism rate for offenders convicted under this bill will not change from current rates, therefore, there will be no fiscal impact due to returns.

Department of Justice (DOJ):
10. In calendar year 1996 there were 76 fourth offense DUI convictions per Motor Vehicle Division (MVD), DOJ data.
11. The Montana Highway Patrol (MHP) writes approximately 27 percent of all DUI citations per Department of Transportation (MDT) data. In calendar 1996 the MHP was responsible for issuing 21 DUI citations resulting in fourth offense convictions. (76 x 27% = 21)
12. HB100 reduces fourth DUI offense to a misdemeanor from a felony and makes MHP responsible for the incarceration costs rather than the Department of Corrections. Sentencing is at the discretion of local judges and varies from 6 months to 1 year.
13. The statewide average daily prisoner per diem for MHP prisoners is $43.21.
14. MHP incarceration costs (prisoner per diem) would increase by approximately $238,649 per year. (21 x $43.21 x 263 = $238,649)

FISCAL IMPACT:

Expenditures:	FY98 Difference	FY99 Difference
MHP-Prisoner Per Diem	238,649	238,649
MSP-Daily Custody Costs	(17,011)	(246,445)
Total	221,638	(7,796)
Funding:		
General Fund (01)	221,638	(7,796)
Net Impact on Fund Balance: (Revenue minus expense)		
General Fund (01)	(221,638)	7,796

(Continued)

Dave Lewis 1-20-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

LOREN SOFT, PRIMARY SPONSOR DATE

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
The remaining fourth offense DUI convictions would be the responsibility of local law enforcement agencies.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
1. The reduction in sentence length that this bill proposes will decrease the length of time offenders are under DOC supervision after serving their sentence (from an average currently of 3.6 years to 1 to 2 years under this bill). This savings will not be realized until fiscal year 2000.
2. The DOC estimates approximately 400 fourth offense DUI cases that have not been adjudicated.
3. The reduction in sentence length that HB100 proposes would decrease the length of time offenders are on parole after serving their sentence (from a current average of 3.6 years to 1 to 2 years). An associated savings would not be realized until fiscal 2000.
4. The Montana Highway Patrol prisoner per diem costs would continue to increase as contracts with local law enforcement agencies are renegotiated.

4/18	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	98	0
4/19	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	81	12
	SENATE		
4/10	CONFERENCE COMMITTEE APPOINTED		
4/17	CONFERENCE COMMITTEE REPORT NO. 1		
4/18	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	48	0
4/19	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	46	1
4/22	SIGNED BY SPEAKER		
4/25	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		
5/01	SIGNED BY GOVERNOR CHAPTER NUMBER 473 EFFECTIVE DATE: 05/01/97		

HB 100 INTRODUCED BY SOFT *LC0323 DRAFTER: MACMASTER*

REVISE THE PUNISHMENT FOR DRIVING UNDER THE INFLUENCE AND FOR DRIVING WITH AN ALCOHOL CONCENTRATION IN EXCESS OF 0.10

BY REQUEST OF DEPARTMENT OF CORRECTIONS

12/27	INTRODUCED		
1/03	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/07	REFERRED TO CORRECTIONS SELECT COMMITTEE		
1/13	FISCAL NOTE RECEIVED		
1/20	REVISED FISCAL NOTE RECEIVED		
1/20	REVISED FISCAL NOTE PRINTED		
1/29	HEARING		
3/11	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/12	REVISED FISCAL NOTE RECEIVED		
3/12	2ND READING PASSED	89	10
3/12	REVISED FISCAL NOTE PRINTED		
3/13	3RD READING PASSED	88	11
	TRANSMITTED TO SENATE		
3/14	FIRST READING		
3/14	REFERRED TO FINANCE & CLAIMS		
3/18	HEARING		
3/20	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/22	REREFERRED TO JUDICIARY		
3/26	HEARING		
4/07	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/09	2ND READING CONCURRED AS AMENDED	33	17
4/10	3RD READING CONCURRED	31	19
	RETURNED TO HOUSE WITH AMENDMENTS		
4/14	2ND READING AMENDMENTS CONCURRED	89	9
4/15	3RD READING CONCURRED AS AMENDED	90	8
4/19	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		
5/02	SIGNED BY GOVERNOR CHAPTER NUMBER 512 EFFECTIVE DATE: 05/02/97		

HEARING ON HB 100

Opening Statement by Sponsor: REP. LOREN SOFT, HD 12 **EXHIBIT 2**
{Tape: 1; Side: B; Approx. Time Count: 4.9; Comments: Rep. Soft introduced the bill and provided proposed amendments (Exhibit 2).}

Proponents' Testimony:

RICK DAY, Director, Department of Corrections
{Tape: 1; Side: B; Approx. Time Count: 13.6.}

MIKE MATHEW, Montana Association of Counties/Yellowstone County
{Tape: 1; Side: B; Approx. Time Count: 19.5.}

MIKE RUPPERT, State DUI Task Force
{Tape: 1; Side: B; Approx. Time Count: 21.8.}

JOAN HIMEL, Helena Resident
{Tape: 1; Side: B; Approx. Time Count: 22.7; Comments: Ms. Himel registered as an opponent to the bill but testified as a proponent after hearing the proposed amendments to the bill.}

JOYCE POEPPING, Helena Resident
{Tape: 1; Side: B; Approx. Time Count: 25.5; Comments: Ms. Poepping registered as an opponent to the bill but testified as a proponent after hearing the proposed amendments to the bill.}

Opponents' Testimony:

JOHN MILLER, Great Falls Resident
{Tape: 1; Side: B; Approx. Time Count: 28.3.}

BETTY WING, Missoula County Attorneys' Office
{Tape: 1; Side: B; Approx. Time Count: 31.4.}

MIKE MENAHAN, Lewis and Clark County Attorney's Office
{Tape: 1; Side: B; Approx. Time Count: 39.5; Comments: Mr. Menahan's testimony continued on Tape 2, Side A.}

SUE WILKINS, Missoula Correctional Services, Inc.
{Tape: 2; Side: A; Approx. Time Count: 8.4.}

HOLLY LANE, Helena Resident
{Tape: 2; Side: A; Approx. Time Count: 14.4.}

LOUANN MILLER HIMEL, Helena Resident
{Tape: 2; Side: A; Approx. Time Count: 16.6.}

Informational Testimony: None

Questions From Committee Members and Responses:
{Tape: 2; Side: A; Approx. Time Count: 22.6; Comments: Committee questions and responses continued on Tape 2, Side B.}

Closing by Sponsor: REP. LOREN SOFT
{Tape: 2; Side: B; Approx. Time Count: 3.5.}

REPORT TO COMMITTEE ON THE SPUR, TEXAS PRIVATE PRISON
{Tape: 2; Side: b; Approx. Time Count: 6.0; Comments: Rep. Dan McGee and Rep. Diana Wyatt visited the Spur, Texas facility at the request of Chairman Bergsagel.}

REP. DAN McGEE **EXHIBIT 3**
{Tape: 2; Side: B; Approx. Time Count: 6.2; Comments: Exhibit 3 includes a written report and photograph negatives.}

REP. DIANA WYATT
{Tape: 2; Side: B; Approx. Time Count: 12.9.}

REP. DAN McGEE
{Tape: 2; Side: B; Approx. Time Count: 21.1; Comments: RE: Criteria for inmates being transferred to the Texas facility.}

Questions and discussion of the facility by Committee Members:
{Tape: 2; Side: B; Approx. Time Count: 22.3; Comments: Committee members discussed and gained clarification regarding inmate transfers to Texas, criteria for transfer, general comparison of Montana State Prison and the Texas facility, security issues and bunking configurations.}

Close of report by Chairman Bergsagel
{Tape: 2; Side: B; Approx. Time Count: 34.0.}

CHAIRMAN ERNEST BERGSAGEL
{Tape: 2; Side: B; Approx. Time Count: 34.3; Comments: Chairman Bergsagel and Rep. Royal Johnson discussed the HB 203 process; Chairman Bergsagel also enjoined appropriate members of the Committee to complete the amendments for HB 83.}

EXHIBIT 4
{Exhibit 4 (RE: HB 203) was given to the Committee Secretary following the conclusion of the meeting.}

EXHIBIT 8
DATE 1/29/97
HB 100

AMENDMENT TO HOUSE BILL 100

AMENDING HB 100 AS INTRODUCED

AMENDMENT BY SPONSOR: REP. LOREN SOFT

1. Page 2, line 12.
Following: "the person"
Insert: "is guilty of a felony offense and"

2. Page 2, line 13.
Strike: "1 year"
Insert: "13 months"

3. Page 3, line 8.
Following: "(e)"
Strike: "The person may not be sentenced to the department of corrections for placement in an appropriate correctional institution or program."

4. Page 3, line 10.
Following: "which the"
Insert: "initial"

5. Page 3, line 10.
Following: "served"
Insert: "or the court shall sentence the person to the department of corrections for placement in an appropriate correctional institution or program,"

6. Page 3, line 11.
Following: "specified"
Insert: "by the court"

7. Page 3.
Following: line 20.
Insert: "(g) Following initial placement of a defendant in a facility set forth in subsection (4)(e), the department of corrections may, at its discretion, place the offender in another facility or program.

8. Page 6, line 2.
Following: "the person"
Insert: "is guilty of a felony offense and"

9. Page 6, line 3.
Strike: "1 year"
Insert: "13 months"

10. Page 6, line 28.
Following: "(e)"
Strike: "The person may not be sentenced to the department of corrections for placement in an appropriate correctional institution or program."

11. Page 6, line 30.
Following: "which the"
Insert: "initial"

12. Page 6, line 30.
Following: "served"
Insert: "or the court shall sentence the person to the department of corrections for placement in an appropriate correctional institution or program,"

13. Page 7, line 1.
Following: "specified"
Insert: "by the court"

14. Page 7.
Following: line 10.
Insert: "(g) Following initial placement of a defendant in a facility set forth in subsection (4)(e), the department of corrections may, at its discretion, place the offender in another facility or program.

- END -

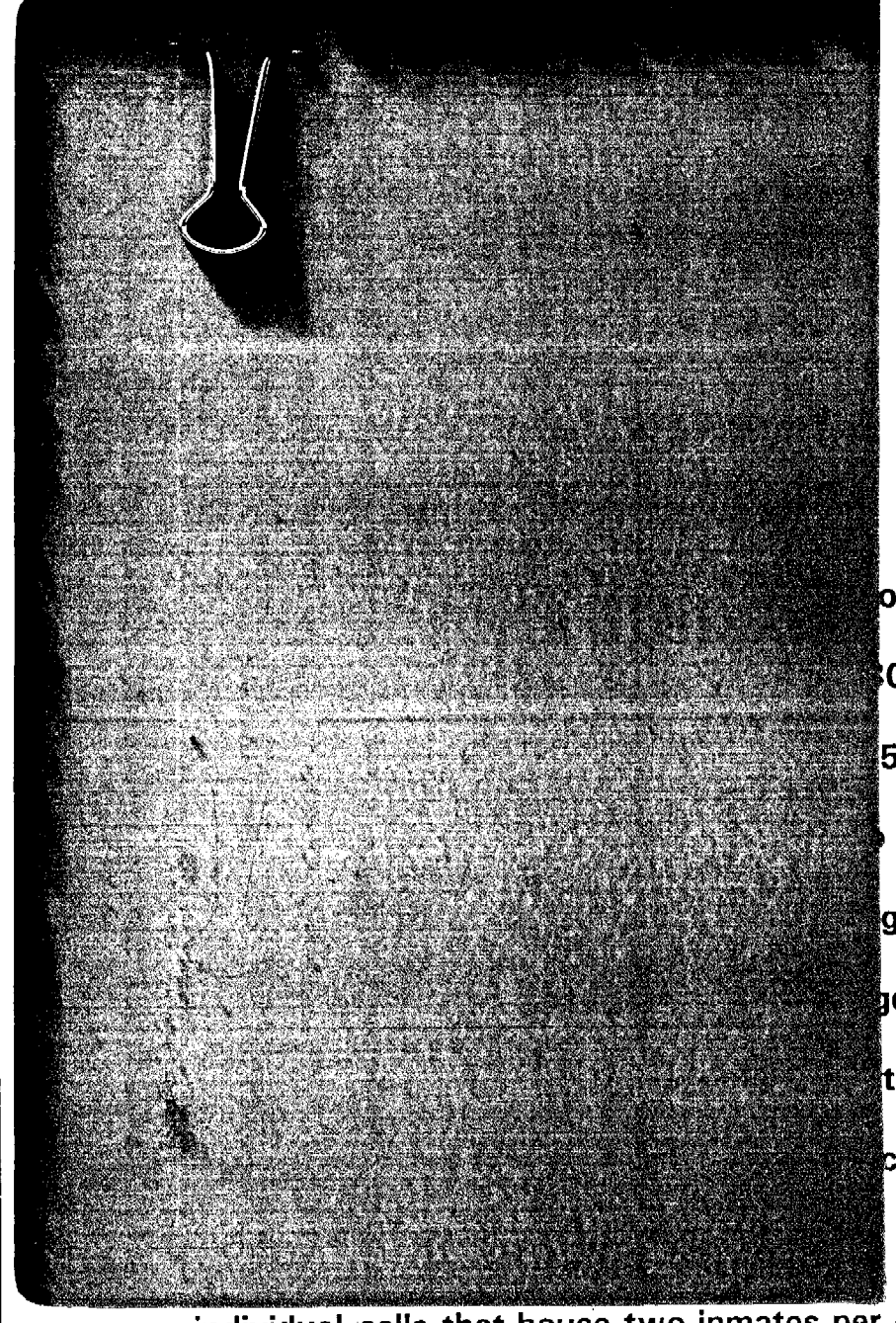


EXHIBIT 3
DATE 1/29/97

Exhibit # 3 - Testimony and negatives

The full exhibit is available from:
MT Historical Society Archives
225 North Roberts
P. O. Box 201201
Helena, MT. 59602-1201
Phone: (406) 444-4774

o

0 miles east of Lubock,

5 at about 10:00 p.m.

the Spur facility and met

gins.

generally a new facility -

the north half of the prison

ch house between four and

block areas which have individual cells that house two inmates per cell and then on the south side of the compound are cells which house a total of 24 imates in a barrack type situation, (all 24 are in one room top and lower bunk facilities, etc.).

Initially when we arrived at about noon on Sunday, Warden Hatt appeared a little bit defensive, I think, because probably word had

MONTANA HOUSE OF REPRESENTATIVES

[redacted]

DATE 1/29/97

BILL NO. HB 100 SPONSOR(S) SOFT

TYPE

PROPONENT (P) [redacted] (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
P O I	Joyce Poepping	3470 Weston Helena MT	Self
P O I	Betty Wing	Courthouse Missoula	self
P O I	Gordon Morris	MACo	MACo
P O I	Joan Himel	2119 Cannon	Self
P O I	Holly Lane	1626 Henderson	self
P O I	LouAnn Miller Himel	2119 Cannon	Self
P O I	Marilyn Miller	127 Adobe	Great Falls
P O I	John H Miller	" "	" "
P O I	Mike Menahan	Courthouse Helena	self
P O I	Sue Wilkins	304 W. Broadway Missoula	Missoula Correctional Services
P O I	Dave Ohler		Dept. of Corrections
P O I	Mike Mathews	MACo Yellowstone Co.	
P O I	with amendments Mike Keppert	P.O. Box 1153 Helena, MT	State DUI Task Force
P O I			

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

House Select COMMITTEE ON CORRECTIONS

ROLL CALL DATE 1/29/97

NAME	PRESENT	ABSENT	EXCUSED
Rep. Ernest Bergsagel, Chairman	✓		
Rep. "Red" Menahan, Vice Chairman	✓		
Rep. Gary Feland	✓		
Rep. Royal Johnson	✓		
Rep. Betty Lou Kasten	✓		
Rep. Matt McCann	✓		
Rep. Dan McGee	✓		
Rep. Steve Vick	✓		
Rep. Diana Wyatt	✓		

Support for HB 544 was provided by:
DON PEEPLES, Montana Energy Research and Development (MERDI)
EXHIBIT 1
SEN. J.D. LYNCH, SD 19
SEN. BEA McCARTHY, SD 29
REP. JOE QUILICI, HD 36
REP. BOB PAVLOVICH, HD 37
REP. DAN HARRINGTON, HD 38
REP. HALEY BEAUDRY, HD 35
GENE VUCKOVICH, Montana Rural Development Partnership
MIKE KERNS, Butte/SilverBow County Commissioner
WAYNE TERNES, Anaconda/Deer Lodge County Commissioner
JOHN McPHERSON, Butte/SilverBow Sheriff
GARY RUE, MERDI
MIKE THATCHER, Community, Counseling & Correctional Services
ANN SHEA, Butte/SilverBow County Attorney's Office
JIM DAVIDSON, Anaconda Local Development
DAVE OHLER, Department of Corrections
JAY GRANT, Butte resident
JOHN O'DONNELL, Anaconda resident
JAKE MACIAC, Anaconda resident
CON MALU, Anaconda/Deer Lodge Planning Board
STEVE McARTHUR, Butte resident
JIM KAMBISH, MERDI

Opponents' Testimony: None

Questions from Committee Members and Responses:
{Tape: 2; Side: A; Approx. Time Count: 3.2.}

Close by Sponsor: **REP. ED GRADY**
{Tape: 2; Side: A; Approx. Time Count: 3.6.}

PRESENTATION: SENTENCING COMMISSION (HB 272)

REP. DAN McGEE
{Tape: 2; Side: A; Approx. Time Count: 6.1; Comments: This bill has already been heard in Judiciary - this presentation is informational for committee in preparation for Executive Action.}

QUESTIONS:
{Tape: 2; Side: A; Approx. Time Count: 13.0.}

==========

EXECUTIVE ACTION

DISCUSSION OF DUI BILLS - EXPLANATION OF COORDINATION:
BRENDA NORDLUND, Montana Department of Justice **EXHIBITS 2-10**

HB 100
{Tape: 2; Side: B; Approx. Time Count: 18.3.}

MOTION: REP. R. JOHNSON MOVED HB 100 DO PASS.
{Tape: 2; Side: B; Approx. Time Count: 18.4.}

MOTION: REP. R. JOHNSON MOVED AMENDMENTS 0100
{Tape: 2; Side: B; Approx. Time Count: 19.4.}

DISCUSSION

VOTE: Motion carried 10-0.

MOTION: REP. R. JOHNSON MOVED THE DOC AMENDMENTS AS REQUESTED BY REP. SOFT.
{Tape: 2; Side: B; Approx. Time Count: 21.4.}

DISCUSSION

VOTE: Motion carried 10-0.

MOTION/VOTE: REP. McGEE MOVED HB 100 AS AMENDED. Motion carried 10-0.
{Tape: 2; Side: B; Approx. Time Count: 27.0.}

HB 208
{Tape: 2; Side: B; Approx. Time Count: 27.3.}

MOTION: REP. McGEE MOVED HB 208 DO PASS.
MOTION: REP. R. JOHNSON MOVED AMENDMENT #2020801
{Tape: 2; Side: B; Approx. Time Count: 27.4.}

DISCUSSION

SUBSTITUTE MOTION: REP McGEE MOVED A CONCEPTUAL AMENDMENT THAT THERE BE COMMUNITY SERVICE AND IT BE WORKED OFF AT A CERTAIN RATE TO BE WORKED OUT.
{Tape: 2; Side: B; Approx. Time Count: 28.3.}

DISCUSSION

SUBSTITUTE MOTION WITHDRAWN.
{Tape: 2; Side: B; Approx. Time Count: 30.8.}

DISCUSSION

SUBSTITUTE MOTION: REP. McGEE MOVED TO STRIKE THE MINIMUM OF $40.00 PER 8-HOUR DAY (IT WOULD BE TAKEN OUT OF THE BILL IN THREE PLACES) AND IT WOULD BE LEFT TO THE DISCRETION OF THE JUDGE TO DETERMINE THAT AMOUNT OF COMMUNITY SERVICE.
{Tape: 2; Side: B; Approx. Time Count: 32.5.}

VOTE: Substitute motion carried 10-0.

MOTION/VOTE: REP. R. JOHNSON MOVED HB 208 AS AMENDED. Motion carried 8-2 with SEN. SWYSGOOD and REP. KASTEN voting no.
{Tape: 2; Side: B; Approx. Time Count: 35.1; Comments:.}

HOUSE OF REPRESENTATIVES

House Select COMMITTEE ON CORRECTIONS

ROLL CALL DATE 3/7/97

NAME	PRESENT	ABSENT	EXCUSED
Rep. Ernest Bergsagel, Chairman	✓		
Rep. "Red" Menahan, Vice Chairman	✓		
Rep. Gary Feland			✓
Rep. Royal Johnson	✓		
Rep. Betty Lou Kasten	✓		
Rep. Matt McCann	✓		
Rep. Dan McGee	✓		
Rep. Steve Vick	✓		
Rep. Diana Wyatt	✓		
Sen. Gage	✓		
Sen. Swenson	✓		
Sen. Christiaens			✓

EXHIBIT 4
DATE 3/7/97
HB 100

Amendments to House Bill No. 100
First Reading Copy

Requested by Rep. McGee
For the Committee on Corrections

Prepared by Susan Byorth Fox
March 5, 1997

1. Page 3, line 16.
Following: "center"
Insert: ";
(vi) a state-approved public or private treatment facility"

2. Page 8.
Following: line 13
Insert: "
NEW SECTION. **Section 3. Coordination instruction.** If House Bill No. 559 and this bill are both passed and approved, then the reference to "subsection (5)" in [section 1(4)(f)] of this bill must be deleted and replaced with a reference to "[section 9 of the first reading copy of House Bill No. 559]"."
Renumber: subsequent section

EXHIBIT 5
DATE 3/7/97
HB 100

Amendments to House Bill No. 100
First Reading Copy

Requested by Representative Loren Soft
For the Committee on Corrections

Prepared by Susan B. Fox
March 7, 1997

1. Page 2, line 12.
Following: "~~and~~"
Insert: "is guilty of a felony offense and"

2. Page 2, line 13.
Strike: "1 year"
Insert: "13 months"

3. Page 3, line 8.
Following: "(e)"
Strike: the remainder of line 8 through "program." on line 9

4. Page 3, line 10.
Following: "which the"
Insert: "initial"
Following: "served"
Insert: "or the court shall sentence the person to the department of corrections for placement in an appropriate correctional institution or program,"

5. Page 3, line 11.
Following: "specified"
Insert: "by the court"

6. Page 3.
Following: line 19
Insert: "(g) Following initial placement of a defendant in a facility set forth in subsection (4)(e), the department of corrections may, at its discretion, place the offender in another facility or program."

7. Page 6, line 2.
Following: "~~and~~"
Insert: "is guilty of a felony offense and"

8. Page 6, line 3.
Strike: "1 year"
Insert: "13 months"

9. Page 6, line 28.
Following: "(e)"
Strike: the remainder of line 8 through "program." on line 9

10. Page 6, line 30.
Following: "which the"
Insert: "initial"

Following: "served"
Insert: "or the court shall sentence the person to the department of corrections for placement in an appropriate correctional institution or program,"

11. Page 7, line 1
Following: "specified"
Insert: "by the court"

12. Page 7.
Following: line 9
Insert: "(g) Following initial placement of a defendant in a facility set forth in subsection (4)(e), the department of corrections may, at its discretion, place the offender in another facility or program."

House Bill No. 100

Introduced By soft

By Request of the Department of Corrections

EXHIBIT 3
DATE 3/7/97
HB 100

A Bill for an Act entitled: "An Act revising the punishment for driving under the influence and for driving with an alcohol concentration in excess of 0.10; CLARIFYING THE TERM AND CONDITIONS OF PUNISHMENT FOR A FOURTH OR SUBSEQUENT CONVICTION; amending sections 61-8-714 and 61-8-722, MCA; and providing an immediate effective date."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving under influence of alcohol or drugs. (1) Except as provided in subsections (8) and (9), a person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a fine of not less than $100 or more than $500. The imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(2) Except as provided in subsection (8), on a second conviction, the person shall be punished by a fine of not less than $300 or more than $500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection (8), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(3) (a) Except as provided in subsection (8), on the third conviction, the person shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year and by a fine of not less than $500 or more than $1,000. Except as provided in subsection (8), notwithstanding any provision to the contrary

providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the imprisonment sentence imposed for a third offense that occurred within 5 years of the first offense may not be suspended.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(4) ~~(a)~~ On the fourth or subsequent conviction, the person IS GUILTY OF A FELONY OFFENSE AND ~~is guilty of a felony offense and~~ shall be punished IN ACCORDANCE WITH [SECTION 3]. ~~by imprisonment for a term of not less than 1 year 6 months or more than 10 years 1 year and by a fine of not less than $1,000 or more than $10,000. Except as provided in subsection (8), notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the~~ The ~~imposition or execution of the first 6 months of the imprisonment sentence imposed for a fourth or subsequent offense may not be suspended. The person is not eligible for parole.~~

~~(b) After serving the term of imprisonment imposed under subsection (4)(a), the person shall serve a supervised release term of not less than 1 year or more than 2 years. The release must be supervised by the department of corrections, which may order all or any portion of the supervised release term to be served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation apply to the supervised release.~~

~~(c) The sentencing judge may impose upon the defendant any reasonable restrictions or~~

~~conditions during the period of supervised release. Reasonable restrictions or conditions may include:~~

~~(i) conditions for supervised release;~~

~~(ii) payment of a fine as provided in 46-18-231;~~

~~(iii) payment of costs as provided in 46-18-232 and 46-18-233;~~

~~(iv) payment of costs of court-appointed counsel as provided in 46-8-113;~~

~~(v) community service;~~

~~(vi) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or~~

~~(vii) any combination of the restrictions or conditions in subsections (4)(c)(i) through (4)(c)(vi).~~

~~(d) If a violation of the restrictions or conditions of the supervised release is established, the court may continue the period of supervised release or may require the defendant to serve the remainder of the supervised release sentence in one of the facilities set forth in subsection (4)(e). The court may credit the remainder of the supervised release or the time to be served in a facility set forth in subsection (4)(e) with all or part of the time already served on supervised release.~~

~~(e) The person may not be sentenced to the department of corrections for placement in an appropriate correctional institution or program. The court shall specify one of the following facilities as the place in which the term of imprisonment must be served, except that a prerelease center or boot camp may not be specified without the prior approval of the department of corrections:~~

~~(i) a state prison;~~

~~(ii) a regional correctional facility;~~

~~(iii) a county jail;~~

~~(iv) a boot camp;~~

~~(v) a prerelease center.~~

~~(f) The court shall order a person who is financially able to do so to pay the costs of imprisonment and supervised release under this subsection (4) and of the information course and treatment under subsection (5).~~

(5) In addition to the punishment provided in this section, regardless of disposition, the

defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of public health and human services, which may include alcohol or drug treatment, or both. Alcohol or drug treatment, or both, must be ordered for a first-time offender upon a finding of chemical dependency made by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. On conviction of a second or subsequent offense under this section, in addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of public health and human services, which must include alcohol or drug treatment, or both. As long as the alcohol information course is approved as provided in this subsection and the treatment is provided by a certified chemical dependency counselor, the defendant may attend the information course and treatment program of the defendant's choice. The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of corrections. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based upon the determination of one of the counselors. On a second or subsequent conviction, the treatment program must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program. A court or counselor may not require attendance at a self-help program other than at an "open meeting" as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in an alcohol information course or treatment program. If the defendant fails to attend the information course or treatment program, the counselor shall notify the court of the failure.

(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been

vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If there has not been an additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then all records and data relating to the prior conviction are confidential criminal justice information, as defined in 44-5-103, and public access to the information may only be obtained by district court order upon good cause shown.

(7) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

(8) The court may order that a term of imprisonment imposed ~~under this section for a first, second, or third offense~~ UNDER THIS SECTION be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(9) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or ~~subsequent third~~ SUBSEQUENT offense, the court may order that a term of imprisonment imposed ~~under this section for a first, second, or third offense~~ UNDER THIS SECTION be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

(10) A court may not defer imposition of sentence under this section."

Section 2. Section 61-8-722, MCA, is amended to read:

"61-8-722. **Penalty for driving with excessive alcohol concentration.** (1) Except as provided in subsection (9), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than $100 or more than $500.

(2) Except as provided in subsection (9), on a second conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than $300 or more than $500.

(3) (a) Except as provided in subsection (9), on a third conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than $500 or more than $1,000.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(4) ~~(a)~~ On the fourth or subsequent conviction, the person IS GUILTY OF A FELONY OFFENSE AND ~~is guilty of a felony offense and~~ shall be punished IN ACCORDANCE WITH [SECTION 3]. ~~by imprisonment for a term of not less than 1 year 6 months or more than 10 years 1 year and by a fine of not less than $1,000 or more than $10,000. Except as provided in subsection (9), notwithstanding any other provision providing for suspension of execution of a sentence imposed under this subsection, the~~ The imposition or execution of the ~~first 6 months of the imprisonment sentence imposed for a fourth or subsequent offense may not be suspended. The person is not eligible for parole.~~

~~(b) After serving the term of imprisonment imposed under subsection (4)(a), the person shall serve a supervised release term of not less than 1 year or more than 2 years. The release must be supervised by the department of corrections, which may order all or any portion of the~~

~~supervised release term to be served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation apply to the supervised release.~~

~~(c) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of supervised release. Reasonable restrictions or conditions may include:~~

~~(i) conditions for supervised release;~~

~~(ii) payment of a fine as provided in 46-18-231;~~

~~(iii) payment of costs as provided in 46-18-232 and 46-18-233;~~

~~(iv) payment of costs of court-appointed counsel as provided in 46-8-113;~~

~~(v) community service;~~

~~(vi) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or~~

~~(vii) any combination of the restrictions or conditions in subsections (4)(c)(i) through (4)(c)(vi).~~

~~(d) If a violation of the restrictions or conditions of the supervised release is established, the court may continue the period of supervised release or may require the defendant to serve the remainder of the supervised release sentence in one of the facilities set forth in subsection (4)(e). The court may credit the remainder of the supervised release or the time to be served in a facility set forth in subsection (4)(e) with all or part of the time already served on supervised release.~~

~~(e) The person may not be sentenced to the department of corrections for placement in an appropriate correctional institution or program. The court shall specify one of the following facilities as the place in which the term of imprisonment must be served, except that a prerelease center or boot camp may not be specified without the prior approval of the department of corrections:~~

~~(i) a state prison;~~

~~(ii) a regional correctional facility;~~

~~(iii) a county jail;~~

~~(iv) a boot camp;~~

~~(v) a prerelease center.~~

~~(f) The court shall order a person who is financially able to do so to pay the costs of~~

~~imprisonment and supervised release under this subsection (4) and of the information course and treatment under subsection (6).~~

(5) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and suspension of driver's licenses, apply to any conviction under 61-8-406.

(6) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of public health and human services, which must include alcohol or drug treatment, or both, in accordance with the provisions of 61-8-714. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(7) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If there has not been an additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then all records and data relating to the prior conviction are confidential criminal justice information, as defined in 45-5-103, and public access to the information may only be obtained by district court order upon good cause shown.

(8) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-401 also constitutes a conviction for a violation of 61-8-406.

(9) The court may order that a term of imprisonment imposed ~~under this section for a first, second, or third offense~~ UNDER THIS SECTION be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's

ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(10) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or ~~subsequent third~~ SUBSEQUENT offense, the court may order that a term of imprisonment imposed ~~under this section for a first, second, or third offense SUBSEQUENT~~ UNDER THIS SECTION be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

(11) A court may not defer imposition of sentence under this section."

NEW SECTION. **Section 3. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- penalty for fourth or subsequent offense.** 1. (a) On the fourth or subsequent conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, the person shall be punished by imprisonment for a term of not less than 6 months or more than 13 months and by a fine of not less than $1,000 or more than $10,000. The imposition or execution of the imprisonment sentence imposed for a fourth or subsequent offense may not be suspended. The person is not eligible for parole.

(b) The court shall:

(i) specify one of the following facilities as the place in which the initial term of imprisonment must be served:

(A) a state prison;

(B) a regional correctional facility;

(C) a county jail;

(D) a boot camp, provided the prior approval of the department of corrections has been obtained;

(E) a prerelease center, provided the prior approval of the department of corrections has been obtained; and

(F) a state-approved public or private treatment facility; or

(ii) sentence the person to the department of corrections for placement in an appropriate correctional institution or program.

HOUSE STANDING COMMITTEE REPORT

March 10, 1997

Mr. Speaker: We, the committee on **Select Committee on Corrections** report that **House Bill 100** (first reading copy -- white) **do pass as amended.**

Signed: _____
Ernest Bergsagel, Chair

And, that such amendments read:

1. Page 2, line 12.
Following: "~~and~~"
Insert: "is guilty of a felony offense and"

2. Page 2, line 13.
Strike: "1 year"
Insert: "13 months"

3. Page 3, lines 8 and 9.
Following: "(e)"
Strike: the remainder of line 8 through "program." on line 9

4. Page 3, line 10.
Following: "which the"
Insert: "initial"
Following: "served,"
Insert: "or the court shall sentence the person to the department of corrections for placement in an appropriate correctional institution or program,"

5. Page 3, line 11.
Following: "specified"
Insert: "by the court"

6. Page 3, line 16.
Following: "center"
Insert: ";
(vi) a state-approved public or private treatment facility"

3-10-97

Committee Vote:
Yes 10, No 0.

521419SC.Hgd

7. Page 3.
Following: line 19
Insert: "(g) Following initial placement of a defendant in a facility set forth in subsection (4)(e), the department of corrections may, at its discretion, place the offender in another facility or program."

8. Page 6, line 2.
Following: "~~and~~"
Insert: "is guilty of a felony offense and"

9. Page 6, line 3.
Strike: "1 year"
Insert: "13 months"

10. Page 6, lines 28 and 29.
Following: "(e)"
Strike: the remainder of line 28 through "program." on line 29

11. Page 6, line 30.
Following: "which the"
Insert: "initial"
Following: "served,"
Insert: "or the court shall sentence the person to the department of corrections for placement in an appropriate correctional institution or program,"

12. Page 7, line 1
Following: "specified"
Insert: "by the court"

13. Page 7.
Following: line 9
Insert: "(g) Following initial placement of a defendant in a facility set forth in subsection (4)(e), the department of corrections may, at its discretion, place the offender in another facility or program."

-END-

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE & CLAIMS

Call to Order: By **CHAIRMAN TOM KEATING**, on March 18, 1997, at 8:07 a.m., in Room 108.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Vice Chairman (R)
Sen. Larry Baer (R)
Sen. Thomas A. "Tom" Beck (R)
Sen. James H. "Jim" Burnett (R)
Sen. B.F. "Chris" Christiaens (D)
Sen. Eve Franklin (D)
Sen. Loren Jenkins (R)
Sen. Greg Jergeson (D)
Sen. John "J.D." Lynch (D)
Sen. Dale Mahlum (R)
Sen. Ken Miller (R)
Sen. Arnie A. Mohl (R)
Sen. Linda J. Nelson (D)
Sen. Mike Taylor (R)
Sen. Daryl Toews (R)
Sen. Mignon Waterman (D)

Members Excused: Sen. Charles "Chuck" Swysgood, Chairman (R)

Members Absent: None

Staff Present: Taryn Purdy, Legislative Fiscal Division
Sharon Cummings, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 100, 3/14/97; HB 208, 3/14/97; HB 559, 3/14/97
Executive Action: None

HEARING ON HB 100

Sponsor: **REP. LOREN SOFT, HD 12, BILLINGS**

Proponents: **Dave Ohler, Department of Corrections**

Opponents: None

Opening Statement by Sponsor:

REP. LOREN SOFT, HD 12, BILLINGS (EXHIBIT #1) handed out. Many of us may have had a philosophy change since last session. The primary purpose of the criminal justice system is to punish the offender, that punishment should be consistent, swift and fit the crime. The system will not rehabilitate anyone, we provide the tools for the offenders to help rehabilitate themselves. HB 100 is a step in that direction, it provides for incarceration and treatment. **REP. SOFT** explained the bill. HB 100 provides truth in sentencing, increases the mandatory minimum term to 6 months without parole and decreases the maximum term from 1-10 years to 6-13 months. This is still a felony offense. This bill makes post-release community supervision mandatory. Under the current law the average supervised release is 1.6 years, the bill makes this 1-2 years and makes it clear that if there is a violation during this supervisory time the offender would return to prison to serve out the sentence.

{Tape: 1; Side: A; Approx. Time Count: 8:15; Comments: None.}

Proponents' Testimony:

Dave Ohler, Department of Corrections (DOC) We support HB 100. We think this bill provides a balance between punishment of 4th offense DUI offenders along with a treatment component. There is a mandatory term of imprisonment of at least 6 months in HB 100. This is a way to get the 4th offender's attention. We think it is important to have mandatory supervised release after the offender is released in the community. HB 100 makes this mandatory for 1-2 years. We think this combination is a good balance. This bill is for 4th offense DUI offenders who drive drunk not those who kill or maim. We ask that you support HB 100.

Opponents' Testimony: None

{Tape: 1; Side: A; Approx. Time Count: 8:19; Comments: None.}

Questions From Committee Members and Responses:

SEN. J.D. LYNCH I have a neighbor who gets a DUI in 1990, 2000, 2010 and 2020. He will be treated the same as a person who had 4 DUI's in the last 3 years, why is that right? It seems to me the judge should have some discretion on this. **Mr. Ohler** Under current law the judge cannot suspend the 6 months sentence, some term of incarceration would have to be served, the minimum is 1½ months. With HB 100, the offender will have to serve 6 months. The decision as to whether this is right is for the committee to decide.

SEN. DALE MAHLUM There is a medication a person can take that will them sick if they take a drink, can we make something

parallel to chemical castration for DUI offenses? **Mary Craigle, DOC** Under current law the judge can use Antibuse as a sentencing recommendation. One of the primary problems with Antibuse is that it has severe side effects in some individuals. Therefore, judges are cautious about using it.

SEN. ARNIE MOHL How many drinks does it take to get to .10? **Brenda Nordlund, Department of Justice (DOJ)** It depends on the size of the individual, how much has been eaten, when they last ate, etc. 8 drinks in 1 hour will get you there.

SEN. KEN MILLER If I understand this right, we have eliminated probation completely for these offenses, is that right? **Mr. Ohler** No, we have made probation mandatory. Currently, it is not mandatory. Under HB 100 there is a mandatory term of imprisonment of 6-13 months then a mandatory term of supervised release which is, essentially, probation for 1-2 years.

SEN. LARRY BAER Not long ago the Senate passed a SB 303 which requires the installation of an interlock device on certain DUI convictions. How do you anticipate this will affect the problem and how will it fit in with what is proposed here? **Mr. Ohler** I see the two working together, ignition interlock is another tool for a judge to use. The ignition interlock applies to other DUI's not just 4th offense DUI's.

{Tape: 1; Side: A; Approx. Time Count: 8:30; Comments: None.}

CHAIRMAN KEATING The alcohol treatment program the state offers in Butte has an 84% success ratio on mandatory treatment. Is there mandatory treatment in this bill? In current law they can ask for an evaluation of a first time offender and if the offender is confirmed by the evaluation that they have a chemical dependency, treatment can be required. Is that still in this bill? **REP. SOFT** There is no change in the current law.

CHAIRMAN KEATING Does this increase the workload in the courts? **REP. SOFT** No.

SEN. TOM BECK Is there some way to clear the record of someone who has a problem with this every 10 years or so? **REP. SOFT** We may be able to change the bill.

CHAIRMAN KEATING How many are in Deer Lodge as a result of this? **REP. SOFT** As of February 1, 1997 there were approximately 132 4th offense DUI offenders in the system. **Ms. Craigle** Graph handed out and explained. **(EXHIBIT #2)**

SEN. LYNCH Is there a way to erase this from the person's record, perhaps a time limit? **Ms. Nordlund** The change would have to be made in this bill. The lifetime count was established during the 1995 legislative session. There are different ways to deal with this. From DOJ's perspective the least desirable way to deal with it is by expungement of a record. If the desire is

to cap the period then say that rather than to expunge the record because the record contains information about an individual's criminal history. The committee could set a 10 year window for 4 DUI's.

SEN. LYNCH Why do you require this question on a drivers license application? **Ms. Nordlund** I don't believe our drivers license application inquires into a DUI conviction, it inquires whether or not you are under suspension or revocation.

SEN. LOREN JENKINS If a person committed murder, went to jail and was released from jail, his record would be clean at the time he was released, wouldn't it? **Ms. Nordlund** His record is not expunged. **SEN. JENKINS** But you cannot use anything from a previous record in any future trial because he has served his time. **Ms. Nordlund** That is not true, judges always have the ability, as part of the pre-sentence investigation, to do a full history of the individual's past criminal activity. Yes, he or she has served their punishment under the law and cannot be punished again for that offense but it can be taken into consideration if he re-offends in the future.

SEN. JENKINS According to our constitution, once they have served their sentence their full rights are returned to them, is that correct? **Ms. Nordlund** It is my concept that there is a full restoration once your punishment has been served, that is correct. **SEN. JENKINS** With DUI, even if he has served his term, his full rights are not restored, is that what you are saying? His next offense would be his 5th, 6th, etc.? **Ms. Nordlund** The full rights being restored are the rights of liberty and whatever property would have been lost as a result of punishment, a loss of voting rights, the ability to perform certain occupations, etc. It doesn't change records which are the historical documentation of what happened with that individual in a particular criminal incident. **SEN. JENKINS** In this case, are you not using the previous record as part of the current sentencing? **Ms. Nordlund** They are not being punished because of their past crimes, they are being punished because they were put on notice in the beginning that if they commit another crime the punishment will be enhanced. We can't change the punishment for the prior, but if they commit a new criminal act this legislative body has the right to set the parameters for punishment for that.

SEN. MIGNON WATERMAN To me the whole purpose of DUI laws is to tell people they shouldn't drink and drive. It doesn't matter if a person kills a person with a gun or with a car, they are just as dead. We don't expunge the record for someone who has raped or murdered, why would we do that for someone who killed someone with a car? Is this any different in the eyes of the law? **Ms. Nordlund** No, a DUI's that do and do not result in personal injury to another can be compared to our domestic violence law. With this law the penalty is enhanced based on prior incidence of domestic violence committed by a particular offender. It is not

an alien concept to the criminal justice system that recidivism brings a different consequence than the initial offense.

SEN. EVE FRANKLIN When does supervised treatment start in this process? **Ms. Nordlund** This bill only deals with the 4th offender. There is mandatory treatment components for 2nd or subsequent offenders in law. **CHAIRMAN KEATING** Page 3, subsection 5 gets into that. The required testing was initiated in 1985.

SEN. FRANKLIN I looks like the supervised release is fairly limited for the 4th offense with a maximum of 2 years. Is 2 years enough? **Mr. Ohler** If a person has an alcohol problem they would have 6 months in prison and 2 years of supervised release, we hope they will have the problem under control after 2½ years. These people can be supervised for life and they can still decide to have a drink and drive.

SEN. BECK If HB 100 passes, what will this do to the prison projections? Could it drop as much as 300-400 beds? **Ms. Craigle** We should see a decrease in prison numbers. The bed number is in the fiscal note.

SEN. BECK In the institutions budget do you reflect this bill passing in the ending fund balance? **Ms. Craigle** We looked at the projections for first offense DUI when coming up with our projections. At that point, we only had 41 DUI offenders and that was a negligible amount.

SEN. MOHL The anticipated increase is between 12%-13% per year. Are you saying the percentage will be the same through 1999 and this bill will not change that? **Ms. Craigle** That is correct. The number we took the projections from was only 41 and when looked at against the total number of inmates we based the projections on, over 5 years this made about a 5 bed difference in the projections. **SEN. MOHL** We were just told there is 140 of these offenders in the system. **Ms. Craigle** We did the projections in May 1996, at that time there were 41 DUI offenders in the system. As of February 1, 1997 we have 132 in the system.

{Tape: 1; Side: B; Approx. Time Count: 8:58; Comments: None.}

Closing by Sponsor:

REP. SOFT The 4th offense DUI offender is probably a person with a very, very serious drinking problem and has probably been driving drunk hundreds of times. This bill allows the judge to put the offender in a pre-release center so he can still work, etc. There may be the option of a plea bargain for the offender who gets caught every 10 years. This bill may open some beds at Montana State Prison because of the other options that are available. This expands the options to more than imprisonment. I would appreciate your support of this bill.

SENATE FINANCE AND CLAIMS
EXHIBIT NO. 1
DATE 3/18/97
BILL NO. HB 100

Synopsis of DUI Bills

for Senate Finance and Claims Committee
March 18, 1997

Prepared by Brenda Nordlund
Department of Justice

HB 100 (Soft) - REVISE PUNISHMENT FOR FELONY DUI (req. by Dept. of Corrections)

Retains felony status for persons convicted of a fourth or subsequent lifetime DUI or excess alcohol concentration (BAC) charge.

Reduces stated minimum imprisonment for DUI and BAC felons to 6 months from 1 year and the maximum imprisonment from 10 years to 13 months.

Net effect, however, is that longer minimum imprisonment will be served by DUI and BAC felons than under current law because DUI and BAC felons are no longer eligible for parole under terms of HB 100. The maximum possible imprisonment for a DUI or BAC felon is 37 months, counting a maximum *initial* imprisonment term of 13 months plus a maximum *additional 2 year term for violation of supervised release*.

Requires sentencing court to specify where initial term of imprisonment will be served - a state prison, a regional correctional facility, a county jail, a state-approved public or private treatment facility, or upon prior approval by dept. of corrections, a pre-release center or boot camp - or sentence defendant to department of corrections for placement.

Requires supervised release by department of corrections, under conditions imposed by the court, for a minimum of one year to a maximum of two years following imprisonment sentence, any portion of which may be served under intensive supervision.

Violation of conditions of supervised release may result in re-incarceration on one of specified facilities.

Permits court to order financially able defendant to pay imprisonment, supervised release, ACT and treatment costs.

HB 208 (Marshall) - INCREASING DUI/BAC AND D/W SUSPENDED OR REVOKED FINES

Establishes minimum fine for 2nd DUI of $1,000 (up from $300-500), for 3rd DUI of $1,500 (up from $500 to $1000) and for 4th+ of $1,500 (up from $1,000).

Requires 5 year license revocation, with no probationary driving privileges, for DUI/BAC offender convicted of 3rd+ offense within five years.

Requires court to impose a DUI/BAC level fine and/or imprisonment on a defendant convicted of driving while their license was suspended or revoked as a result of a a DUI or BAC violation.

Permits suspension of DUI/BAC or DWS/R fine upon court findings of extenuating, mitigating circumstances and in lieu of fine, imposition of supervised community service.

HB 559 (Grimes) - REVISE AND RECODIFY DUI PENALTIES (State DUI Task Force bill)

Permits a court to impose remaining portion of suspended sentence if the defendant fails to comply with the current law one-year monthly monitoring requirement following admission to an alcohol or drug treatment program and extend the monthly monitoring period for up to 6 additional months. (16:12-14)

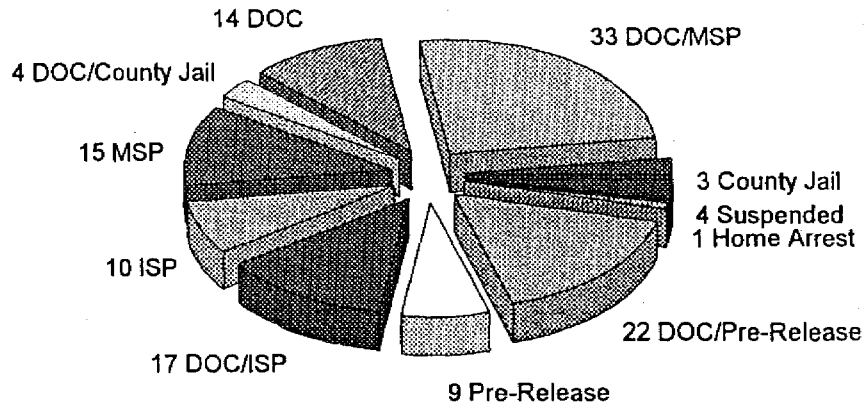
Eliminates the requirement that the Department of Justice treat DUI and BAC conviction records after five years as confidential criminal justice information. Under current law, a driver needs a court order to obtain a complete copy of his or her own lifetime driving record if it includes DUIs or BACs older than five years. (11:19-22; 13:22-26)

Codifies practice of allowing convictions on federal enclaves (military reservations, national parks) and from tribal court to be counted in determining the number of prior DUIs or BACs and reported to the Department of Justice for recordkeeping purposes. (15:4-7; 17:5-8)

Restructures existing DUI and BAC penalty provisions in topical manner, i.e., one section for ACT and treatment provisions (section 9); one section for vehicle forfeitures (section 10); and one section for miscellany - defining conviction, how to count number of convictions, place of imprisonment, no deferral of sentencing, etc. (section 11). Remaining penalty provisions in current law were consolidated and rewritten in simple declarative style. Other than the extension of court jurisdiction to enforce current law monthly monitoring requirement, as discussed above, no substantive changes to DUI and BAC penalty provisions resulted from revisions.

4th Offense DUI Commitments - 132 Total

For the Period 10/1/95 to 2/1/97



Average Sentence 3.5 Years

Counts based on hand tally of P&P worksheets and ACIS run

SENATE JUDICIARY AND CLAIMS
EXHIBIT NO. 2
DATE 3/18/97
BILL NO. HB 100

EXECUTIVE ACTION ON HB 100

Motion: **SEN. CHRISTIAENS MOVES HB 100 BE CONCURRED IN.**

Discussion: **SEN. TAYLOR** I have a note saying an amendment would be brought addressing the length of this term.

SEN. BAER I spoke with **REP. SOFT** about bring an amendment that clarifies the situation of how many convictions over how many years.

SEN. LYNCH Right now the judge has the discretion to suspend the 6 months sentence. We are eliminating the ability for parole, as I understand this. **Dave Ohler, DOC** Under current law a judge can suspend all the sentence except for 6 months. In the bill a judge has to sentence them for a minimum of 6 months and they are not eligible for parole.

Motion/Vote: **SEN. LYNCH MOVES TO AMEND HB 100 BY STRIKING PAGE 2, LINE 18 AND PAGE 6, LINE 15 AFTER THE WORD SUSPEND. THE MOTION CARRIED UNANIMOUSLY.**

Motion: **SEN. CHRISTIAENS MOVES HB 100 BE CONCURRED IN AS AMENDED.**

Discussion: **SEN. KEN MILLER** Originally the bill was written for more than one year, why changed to more than 13 months? **Mr. Ohler** It was changed to 13 months to be sure it meets the definition of a felony offense. Anything up to a year is a misdemeanor.

Vote: **THE MOTION THAT HB 100 BE CONCURRED IN AS AMENDED CARRIED WITH SEN. WATERMAN, MILLER, MAHLUM AND MOHL VOTING NO. SEN. CHRISTIAENS** will carry HB 100.

{Tape: 2; Side: B; Approx. Time Count: 10:53; Comments: None.}

EXECUTIVE ACTION ON HB 208

Amendments: Amendment #hb020802.asf. **(EXHIBIT #5)**

Motion: **SEN. LYNCH MOVES TO AMEND HB 208 WITH AMENDMENT #HB020802.ASF.**

Discussion: **SEN. LYNCH** I don't know that this bill should pass at all as I think the fines are pretty high now for the people I represent. It seems this fine should be based on one's ability to pay. I'm trying to be fair to everyone.

SEN. TAYLOR I'm against the amendment. I understand what **SEN. LYNCH** is trying to do but we are setting precedents where equal protection could be questioned in a court of law. That could be unconstitutional. Also, when you start delving into personal

Motion: **SEN. HOLDEN MOVED HB 264 BE CONCURRED IN AS AMENDED.**

Motion: **SEN. HALLIGAN MADE A SUBSTITUTE MOTION TO TABLE HB 264.**

Discussion: **SEN. HALLIGAN.** I have a philosophical difference with you concerning families and how the government addresses them.

Vote: **SEN. HALLIGAN'S MOTION TO TABLE HB 264 FAILED 4-6 IN A ROLL CALL VOTE.**

Vote: **SEN. HOLDEN'S ORIGINAL MOTION THAT HB 264 BE CONCURRED IN AS AMENDED FAILED 5-5 IN A ROLL CALL VOTE.**

NO FURTHER ACTION WAS TAKEN ON HB 264 AT THIS TIME.

CHAIRMAN CRIPPEN. The Joint Senate Judiciary and Taxation Committees party is tentatively scheduled for Wednesday, April 9, at the Montana Club. Please let the secretary know how many you will be bringing.

HEARING ON HB 100

Sponsor: **REP. LOREN SOFT, HD 12, Billings**

Proponents: **Diana Leibinger-Koch, Counsel, Department of Corrections**

Opponents: **Mike Menahan, Deputy County Attorney, Lewis and Clark County**

Opening Statement by Sponsor: **REP. LOREN SOFT, HD 12, Billings.** This bill deals with the fourth DUI. The amendments are great, so I support them.

Proponents' Testimony: **Diana Leibinger-Koch, Counsel, Department of Corrections**, explained the amendments hb010003.asf **(EXHIBIT #5)**. The amendments reorganize the bill to make it more readable and flow better. There is also one significant difference in subsection (4) (e), which makes it clear what happens if supervised release is violated.

{Tape: 1; Side: B; Approx. Time Count: #20; Comments: 10:13 a.m.}

I believe judges, prosecutors, and the defense can sue, so judgments will be understandable, as they have been ambiguous at times in the past.

Opponents' Testimony: **Mike Menahan, Deputy County Attorney, Lewis and Clark County.** During the last legislature you recognized that chronic DUI offenders were quite a problem and that they proposed a significant danger to others. I believe we need to keep current law, as no one gets 10 years in Montana State Prison (MSP) for four DUIs. We have people here with 10,

11, and 12 DUIs, and they're remanded to treatment and the Department of Correction's supervision. We have some chronic offenders who re-offend as soon as their earliest DUI on record comes off. A man named Shaun Smigaj was of that ilk. He killed a passenger, and was sent to MSP for homicide. Within days of his parole he got another misdemeanor DUI, so he was sent back to MSP. When he was again released on parole, he got another DUI right away. Therefore, we charged him with criminal endangerment, and he went back to MSP.

HB 100 fails to address these chronic DUI drivers. At least 90 percent of felon DUIs have been in chemical dependency treatment, so we are dealing with those who are not necessarily amenable to treatment, and who pose a danger to society by continuing to drink and drive. I don't believe we should limit this to 13 months. Between October 1, 1995 and October 1, 1996, there were 58 felony DUIS. Since then there have been ten.

{Tape: 2; Side: A; Approx. Time Count: #00; Comments: 10:28 a.m.}

I believe there is some evidence that this is purely anecdotal, and that we should send a message that this behavior is intolerable.

Letter from Don Spivey (EXHIBIT #6).

Questions From Committee Members and Responses: **CHAIRMAN CRIPPEN.** In debate on second reading we saw two central issues: 1) legislative policy concerning sentencing after a fourth conviction; and 2) taking them out and pulling them back in. My amendments attempt to deal with these issues.

You mentioned your concern is still initial term, and length of supervision. If I so change my amendment would that help? **Mike Menahan.** That would make it more palatable. Of the 58 DUIs I spoke of, 5 got a second felony DUI while they were out on bail.

CHAIRMAN CRIPPEN. What length of time do you suggest? **Mike Menahan.** I'd like to see not less than one year and not more than four years for incarceration - two years would be nice.

{Tape: 2; Side: A; Approx. Time Count: #5.9; Comments: None}

SEN. SUE BARTLETT. It's not just the fourth offense, but every offense thereafter.

SEN. HALLIGAN. Can you identify some of the costs associated with the amendments, and what Mr. Menahan was saying about extending it out from two to four years? **Debbie Leibinger-Koch.** The cost issue has been a real problem with the statute as it is now. It was not clear if they are an inmate of the State if the State is to reimburse, or if they are an inmate of a county, if the county assumes incarceration costs, but the amendments clear this up. The counties wanted this in the bill, so they could

have the flexibility of having those inmates spend their time in the county jail, knowing they would have to assume the cost. Thus, if they are sent by a judge to MSP, to the Department of Corrections, they're a state inmate and the state would reimburse the county.

SEN. HALLIGAN. I had also asked about extension of time in terms of incarceration time that Mr. Menahan talked about. **Debbie Leibinger-Koch.** There are judges who currently sentence offenders to ten years. The Fiscal Note says current sentence imposed is an average of 3.5 years. The problem MSP and the Department of Corrections have is that these offenders are taking up maximum secure space in correctional facilities, but are not violent offenders per se. So, the Department wanted to lengthen the amount of time prisoners would take up space in such facilities, Thus, this would allow placement in boot camps or pre-release centers. The other problem is in trying to differentiate what happens with sentences. If it's a sentence of incarceration, then it is a sentence of supervised release. What Mr. Menahan was talking about is offenders being sentenced to 10 years now, who are serving only 15 months. In the bill, if they are sentenced to 13 months, they would serve 13 months in incarceration.

{Tape: 2; Side: A; Approx. Time Count: #14; Comments: None}

SEN. DOHERTY. Why would an elected district court judge not automatically sentence these individual to the Department of Corrections? Every district court judge has to talk to county commissioners about their budget. **Diana Leibinger-Koch.** I've talked to many district court judges and some say they want certain offenders to stay in the county. If so, it's their cost of incarceration, and they're willing to assume the cost.

SEN. DOHERTY. Will any funds follow these people to the county level? **Diana Leibinger-Koch.** We have discussed this with MACO, and they're amenable to having this choice and knowing if they choose county incarceration, there are no funds that follow. That's their choice.

SEN. BARTLETT. Who would bear the cost of sentencing these offenders to a public or private treatment facility? **Diana Leibinger-Koch.** That's a very good question. I assume the inmate or some other entity would pay. The only way the state reimburses the county is via contract. We have no reciprocity contracts with treatment facilities.

SEN. BARTLETT. How did the Department settle on 13 months and 2 years? **Diana Leibinger-Koch.** In the original bill we had no parole provision, and we took average sentence and incarceration times to make that the sentence, so it didn't change what is happening now. Statistics show the most offenders violating the conditions of their parole do so within the first two years.

SEN. BARTLETT. Do the amendments restore parole eligibility? **Diana Leibinger-Koch.** The House Appropriations Committee struck this, and it would remain deleted with these amendments.

VICE CHAIRMAN GROSFIELD. Does this affect the interlock device bill? **Susan Fox.** HB 559 and SB 303 or 330 have been coordinated, but don't directly affect these two sections in this bill. The interlock devise has more to do with whether a drivers' license is revoked or not, but those bills would interact with this bill.

CHAIRMAN CRIPPEN. I believe the amendments must go on for the bill to go out. A concern was raised regarding the length of time. What is the Committee's preference?

SEN. HOLDEN. I believe we should leave the amendment as written. How long do taxpayers need to babysit a drunk? **SEN. CRIPPEN.** During the period of supervision, the drunk can be hauled back in for another offense. As the law is now, they couldn't do this.

Closing by Sponsor: **REP. SOFT** made no closing comments.

EXECUTIVE ACTION HB 100

Motion: **SEN. JABS MOVED TO CHANGE THE TIME IN (4)(A)(ii) TO MAKE IT ONE YEAR TO FOUR YEARS, AND TO ADOPT THE REMAINDER OF THE PROPOSED AMENDMENTS.**

Discussion: **VICE CHAIRMAN GROSFIELD.** So, if they're sentenced for nine months, and they're incarcerated for nine months, and then placed in four years of supervised release, what if in the third year they violate. Is there a new trial or do they go back to prison, and if so, for how long? **Diana Leibinger-Koch.** Part(e) of Subsection 4 would kick in, and the judge could require prison for up to four years if that were the original sentence.

VICE CHAIRMAN GROSFIELD. If it happened at 3.6 years, would they serve 6 months or 4 years? **Diana Leibinger-Koch.** It could be for 4 years, depending upon what the judge sentences.

CHAIRMAN CRIPPEN. Keep in mind that a county attorney can bring them back to trial on a new charge, and they would have to go through the whole procedure again with a new four-year period. **Diana Leibinger-Koch.** After reading this I see that a judge could not impose the remainder of the existing sentence, but would impose a new four-year sentence.

VICE CHAIRMAN GROSFIELD. So, we have a policy issue before us to put the remainder of a supervised release sentence or another time frame. **CHAIRMAN CRIPPEN.** In sentencing you have (a) and (b) dealing with incarceration, and (c) dealing with supervised release. So, if we change this, we would also need to change the 13 months.

Valencia Lane. It has to be all three.

SEN. BARTLETT. In terms of revoking supervised release, the reality is that boot camp only takes people for 90-120 days, and then they go to Great Falls pre-release center, and pre-release limits them to one to two years. We also need to look at public and private treatment facilities, as I don't believe there are any who take people for even six months, much less one year, so these people would end up in county jails or MSP.

CHAIRMAN CRIPPEN. I had hoped to get this done, as **SEN. HALLIGAN** has another meeting to go.

Vote: **SEN. JABS' MOTION TO AMEND HB 100 CARRIED UNANIMOUSLY.**

Discussion: **SEN. BARTLETT.** We need to address public and private facilities.

Motion/Vote: **SEN. BARTLETT MOVED TO RESTORE THE LANGUAGE ON PAGE 2, LINE 18, "The person is not eligible for parole". THE MOTION CARRIED UNANIMOUSLY.**

Motion: **SEN. BARTLETT MOVED TO STRIKE "the state approved public or private treatment facility" ON PAGE 3, LINE 20.**

{Tape: 2; Side: B; Approx. Time Count: #00; Comments: 11:08 a.m.}

Discussion: **Susan Fox.** If you look in Subsection (d), the Department can follow up with another facility, but I don't know if this addresses your concerns. **VICE CHAIRMAN GROSFIELD.** If the judge sent them to MSP, they can't be transferred to a regulated correctional facility. Is **SEN. BARTLETT** correct? And what would it do? Is this then a good route to go? **Debbie Leibinger-Koch.** You're both correct, and this would be a wise amendment.

SEN. BARTLETT. As long as it is clear they'll be in one of these facilities from 6-13 months. **VICE CHAIRMAN GROSFIELD.** For the record, I believe this is clear in Subsection (i) where it says "the imposition or application of which may not be suspended". So, whatever the initial sentence is in terms of time, that's the amount of time that has to be served, and the Department can juggle around when they want to do it, if we adopt this change, but they cannot shorten the time.

{Tape: 2; Side: B; Approx. Time Count: #2.3; Comments: None}

Valencia Lane. The first amendment #3 was to strike 2 and insert 4 in the 2 places it appears in (4) (a) (ii); then you adopted the hb010003.asf amendments as amended; then you adopted **SEN. BARTLETT**'s amendments on page 2, line 18, and page 6, line 15. Then I believe **SEN. BARTLETT** moved to strike (F) in the two places where it appears.

Motion: **VICE CHAIRMAN GROSFIELD MOVED TO STRIKE "must be served" and insert "shall begin" IN (I)(4)(b)(i).**

Discussion: **VICE CHAIRMAN GROSFIELD.** It goes to Senator Bartlett's concern which I share.

CHAIRMAN CRIPPEN. What does "an initial" mean? **Susan Fox.** We have initial term of imprisonment and then supervised release, and I agree that maybe it's not clear. **Rick Day, Director, Department of Corrections.** The intention was that the person would serve the sentence placed by the judge, but if we allowed a placement in pre-release and they fail at rerelease, then we have to have a place to put them. **SEN. BARTLETT** is right in that treatment doesn't really belong here. As I read this, they must serve their first term as the court specifies, and then the Department could move them to another program.

Valencia Lane. It seems we are talking about three phases of sentencing: 1) imprisonment; 2) supervised release; and 3) a fine. By referring to the first term as an "initial" term of imprisonment, it infers more than one term of imprisonment, and I don't think that is what is intended. It would be best to strike "initial" and simply refer to the term of imprisonment. I would like clarification as to whether they truly intended state-approved public or private treatment facility to be part of the imprisonment phase or part of the pre-release phase. **Susan Fox. REP. MCGEE** made that amendment with the intent of treatment as a place of imprisonment for the first 28 days as a sentencing option. We obviously did not deal with the remaining part of the imprisonment.

Valencia Lane. In (b) where imprisonment must be served, could we divide it up and state that imprisonment must be served in (a), (b), (c), or (d) and put in a new subsection of (b) saying "prior to placement in one of those facilities, the person may be placed in a public or private facility, and then may be transferred to one of those facilities in (a), (b), or (c).

VICE CHAIRMAN GROSFIELD. Is a 28-day treatment program most useful at the beginning of a sentence or later on. **Diana Leibinger-Koch.** It seems that most treatment programs like to see treatment at the very beginning of a sentence. That may do the same thing that **REP. MCGEE** wanted in this.

CHAIRMAN CRIPPEN. I assume we're doing all this with the intention of passing this bill out. I'm asking **Valencia Lane** to work with **Susan Fox** on these issues and to get them worked out.

VICE CHAIRMAN GROSFIELD WITHDREW HIS PREVIOUS SUBSTITUTE MOTION AND SEN. BARTLETT WITHDREW HER MOTION.

Motion/Vote: **VICE CHAIRMAN GROSFIELD MOVED TO STRIKE (4)(a)(ii) "an initial" IN BOTH PLACES WHERE IT APPEARS IN AMENDMENTS 1 AND**

2, AND STRIKE "initial" IN BOTH PLACES OF (4)(b)(i). THE MOTION CARRIED UNANIMOUSLY.

CHAIRMAN CRIPPEN. I want to finish this bill as soon as we can and deal with HB 571 and HB 572, and HB 306 is possible.

SEN. VAN VALKENBURG. I would like to be able to make my concerns about this bill known to the Committee tomorrow, if you will allow me. **CHAIRMAN CRIPPEN.** Okay.

LEGISLATIVE TAPE LOG

COMMITTEE: Senate Judiciary

DATE: March 26, 1997

MINUTES	CONTENT NOTES
11:17a, T2, SB, #	HB 100 - Exec disc/ not disc/ ~~not~~ not/note
11:25a	adjourn

DATE 3-26 97

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB1001

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
DIANA LEIBINGER-KOCH	DEPT. OF CORRECTNS	100	✓	
Mike Menchen - Lewis/Clark Co. Atty	office			✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3-26-97

NAME	PRESENT	ABSENT	EXCUSED
SUE BARTLETT	✓		
AL BISHOP	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
WALT MC NUTT	✓		
LORENTS GROSFIELD, VICE CHAIRMAN	✓		
BRUCE CRIPPEN, CHAIRMAN	✓		

SEN:1995
wp.rollcall.man
CS-09

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 3/26/97
BILL NO. HB 100

Amendments to House Bill No. 100
Second Reading Copy - Second House

Requested by Senator Crippen
For the Committee on Judiciary

Prepared by Susan Byorth Fox
March 22, 1997

1. Page 2, line 12 through page 3, line 26.
Strike: subsection (4) in its entirety
Insert: "(4) (a) On the fourth or subsequent conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, the person is guilty of a felony and shall be punished by:

(i) an initial imprisonment for a term of not less than 6 months or more than 13 months, the imposition or execution of which may not be suspended;

(ii) a supervised release term of not less than 1 year or more than 2 years; and

(iii) a fine of not less than $1,000 or more than $10,000.

(b) The court shall:

(i) specify one of the following facilities as the place in which the initial term of imprisonment must be served:

(A) a state prison;

(B) a regional correctional facility;

(C) a county jail;

(D) a boot camp, provided the prior approval of the department of corrections has been obtained;

(E) a prerelease center, provided the prior approval of the department of corrections has been obtained; or

(F) a state-approved public or private treatment facility; or

(ii) sentence the person to the department of corrections for placement in an appropriate correctional institution or program; and

(iii) order a person who is financially able to pay the costs of imprisonment and supervised release under this section and of the information course and treatment under subsection (5).

(c) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of supervised release. Reasonable restrictions or conditions may include:

(i) conditions for supervised release;

(ii) payment of a fine as provided in 46-18-231;

(iii) payment of costs as provided in 46-18-232 and 46-18-233;

(iv) payment of costs of court-appointed counsel as provided in 46-8-113;

(v) community service;

(vi) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or

(vii) any combination of the restrictions or conditions listed in subsections (4)(c)(i) through (4)(c)(vi).

(d) (i) Following initial placement of a defendant in the facility specified by the court in accordance with subsection (4)(b)(i) or (4)(b)(ii), the department of corrections may, at its discretion, place the offender in another facility or program.

(ii) The term of supervised release must be supervised by the department of corrections, which may order all or any portion of the supervised release term to be served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation, apply to the supervised release.

(e) If a violation of the restrictions or conditions of the supervised release is established, the court may continue the period of supervised release or may require the defendant to serve the remainder of the supervised release sentence in one of the facilities set forth in subsection (4)(b)(i) or (4)(b)(ii). The court may credit the remainder of the supervised release or the time to be served in a facility set forth in subsection (4)(b)(i) or (4)(b)(ii) with all or part of the time already served on supervised release.""

2. Page 6, line 9 through page 7, line 22.
Strike: subsection (4) in its entirety
Insert: "(4) (a) On the fourth or subsequent conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, the person is guilty of a felony and shall be punished by:

(i) an initial imprisonment for a term of not less than 6 months or more than 13 months, the imposition or execution of which may not be suspended;

(ii) a supervised release term of not less than 1 year or more than 2 years; and

(iii) a fine of not less than $1,000 or more than $10,000.

(b) The court shall:

(i) specify one of the following facilities as the place in which the initial term of imprisonment must be served:

(A) a state prison;

(B) a regional correctional facility;

(C) a county jail;

(D) a boot camp, provided the prior approval of the department of corrections has been obtained;

(E) a prerelease center, provided the prior approval of the department of corrections has been obtained; or

(F) a state-approved public or private treatment facility; or

(ii) sentence the person to the department of corrections for placement in an appropriate correctional institution or program; and

(iii) order a person who is financially able to pay the costs of imprisonment and supervised release under this section and of the information course and treatment under subsection (6).

(c) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of supervised release. Reasonable restrictions or conditions may include:

(i) conditions for supervised release;

(ii) payment of a fine as provided in 46-18-231;

(iii) payment of costs as provided in 46-18-232 and 46-18-233;

(iv) payment of costs of court-appointed counsel as provided in 46-8-113;

(v) community service;

(vi) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or

(vii) any combination of the restrictions or conditions listed in subsections (4)(c)(i) through (4)(c)(vi).

(d) (i) Following initial placement of a defendant in the facility specified by the court in accordance with subsection (4)(b)(i) or (4)(b)(ii), the department of corrections may, at its discretion, place the offender in another facility or program.

(ii) The term of supervised release must be supervised by the department of corrections, which may order all or any portion of the supervised release term to be served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation, apply to the supervised release.

(e) If a violation of the restrictions or conditions of the supervised release is established, the court may continue the period of supervised release or may require the defendant to serve the remainder of the supervised release sentence in one of the facilities set forth in subsection (4)(b)(i) or (4)(b)(ii). The court may credit the remainder of the supervised release or the time to be served in a facility set forth in subsection (4)(b)(i) or (4)(b)(ii) with all or part of the time already served on supervised release.""

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on March 27, 1997, at 10:00 a.m., in the Senate Judiciary Chambers of the State Capitol, Helena, Montana.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: None
Executive Action: HB 100, HB 264, HB 306, HB 571, HB 572

EXECUTIVE ACTION ON HB 100

Amendments: hb010004.asf **(EXHIBIT #1)**

Motion/Vote: **VICE CHAIRMAN LORENTS GROSFIELD MOVED THAT THE COMMITTEE RECONSIDER ITS ACTION TO STRIP hb010003.asf FROM THE BILL YESTERDAY. THE MOTION CARRIED UNANIMOUSLY.**

Discussion: **Valencia Lane.** Yesterday the Committee adopted hb010003.asf. Today we are looking at hb010004.asf. In the hb010003.asf amendments, stated approved public and private treatment facilities were moved to supervisory lease. There was the change in (4) (a), and subsection (d) clarified following

initial placement in a facility in both #1 and #2 which are both identical. In the tan bill Subsection (4) is deleted by the amendments, and the amendments become the new Subsection (4).

Vote/Motion: VICE CHAIRMAN GROSFIELD MOVED TO ADOPT THE hb010004.asf AMENDMENTS. THE MOTION CARRIED 9-1 IN A ROLL CALL VOTE.

Discussion: What about #3 of the amendments? **Valencia Lane.** It was moved down into (4)(c)(7) into the supervised release phase of sentencing.

Susan Fox. I spoke with **REP. MCGEE.** He felt treatment is an appropriate option as a condition of supervised release after serving a term of imprisonment. He agreed that a treatment center wouldn't hold a person for 6-13 months, and that it would also be cost-prohibitive.

SEN. FRED VAN VALKENBURG. I want to make two points concerning the hb010004.asf amendments. In Section (4)(a)(i), as the law currently exists, the Court is prohibited from suspending or deferring an imposition of sentence for up to six months. The way it is written now it would be for the full 13 months. Is that the sponsor's or the Departments intent? On page 2 of the amendments, the language in Section (4) (e) addresses violation of restrictions or conditions of supervised release, so it gives the Courts power over supervised release, assuming the Department ends up determining how long supervised release is.

In general, it is still an extremely convoluted procedure, as the Department of Corrections figures it can't handle the offender population, and I don't believe it should take away the discretion of judges to impose up to ten years, as some offenders deserve it. They don't care. So the bill is still a mistake, and I urge you to compare it with the overall pattern of sentencing in the State.

CHAIRMAN BRUCE CRIPPEN. We have an obligation to present the bill in the best fashion we can whether it stays in committee or goes out to the floor.

VICE CHAIRMAN GROSFIELD. SEN. VAN VALKENBURG is right about the 6-13 month period, but the Court is going to impose and/or define the sentence and not the Department, so I don't see that inconsistency.

Motion: SEN. STEVE DOHERTY MOVED TO TABLE HB 100.

Discussion: SEN. SUE BARTLETT. If you read (4) (a) and (b) carefully, nowhere does it say that the Court will be the one to impose sentence, although it could be implied. I believe it's too restrictive. We need to give the courts a decent range in sentencing even after the fourth or fifth or tenth DUI.

VICE CHAIRMAN GROSFIELD. I have been looking at (4) (c). By the time they get to their eighth DUI, they would have been in jail 13 months times 8, and the judge has the discretion to impose innovative restrictions. This is a money bill, and that's important in some ways, but it's a reality we can't ignore. Non of us like tax increases to cover it, but we need to try to make it work.

SEN. MIKE HALLIGAN. I haven't received one letter in support of doing this. Swan River could be used for this, and the graduate sanctions provision is excellent. I would like to get endangerment language in the first DUI offense.

SEN. DOHERTY. I agree with **SEN. GROSFIELD** that this is a money bill, but my constituents complain about repeat offender DUIs. The procedure is convoluted, but I believe it is clarified now. I also agree with **SEN. HALLIGAN**'s point, but don't see compellin evidence to pass this.

Vote: **SEN. DOHERTY'S MOTION TO TABLE HB 100 FAILED 5-5 IN A ROLL CALL VOTE.**

Motion/Vote: **VICE CHAIRMAN GROSFIELD MOVED THAT HB 100 BE CONCURRED IN AS AMENDED. THE MOTION FAILED 5-5 IN A ROLL CALL VOTE.**

NO FURTHER ACTION WAS TAKEN ON HB 100 AT THIS TIME.

EXECUTIVE ACTION ON HB 264

Amendments: hb026401.asf (Holden) **(EXHIBIT #2)**

Motion: **SEN. RIC HOLDEN MOVED TO ADOPT HIS AMENDMENTS.**

Discussion: **Valencia Lane.** Yesterday the Committee adopted hb026401.avl which stripped Subsection (3) of the first section of the bill on page 2, lines 5-14, renumbered Sections 4 and 5, deleted Section 2, and amended the title to conform to the bill. The new amendments would change Sections 4 and 5.

SEN. HOLDEN. On page 2, lines 15-16, I believe the victim shoul be able to know certain information about the perpetrator, in 46- 24-207, MCA. Page 2, line 19 allows a youth court officer to give a school official information regarding a student, but not information on enrollment and substance abuse; however, it leave in school disciplinary information. I believe we need this bill as SB 48 may not pass and/or its language may not be clear enough.

SEN. BARTLETT. Is there another bill yet to address release of information to schools? **Susan Fox.** That was SB 15, and it required schools to transfer records and share information with the juvenile justice system; however, no provision tells the

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3/27/97 BILL NO. HB100 NUMBER 1

MOTION: Don - to table

NAME	AYE	NO
SUE BARTLETT	✓	
AL BISHOP	✓	
STEVE DOHERTY	✓	
SHARON ESTRADA		✓
MIKE HALLIGAN	✓	
RIC HOLDEN		✓
REINY JABS		✓
WALT MC NUTT		✓
LORENTS GROSFIELD, VICE CHAIRMAN		✓
BRUCE CRIPPEN, CHAIRMAN	✓	
	5	5

SEN:1995
wp:rlclvote.man
CS-11

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3/27/97 BILL NO. HB 100 NUMBER 1

MOTION: Grosf BCIAA

NAME	AYE	NO
SUE BARTLETT		✓
AL BISHOP		✓
STEVE DOHERTY		✓
SHARON ESTRADA	✓	
MIKE HALLIGAN		✓
RIC HOLDEN	✓	
REINY JABS	✓	
WALT MC NUTT	✓	
LORENTS GROSFIELD, VICE CHAIRMAN	✓	
BRUCE CRIPPEN, CHAIRMAN		✓
	5	5

SEN:1995
wp:rlclvote.man
CS-11

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3/27/97 BILL NO. HB100 NUMBER 1

MOTION: Grosfield to adopt 04 amend

NAME	AYE	NO
SUE BARTLETT	✓	
AL BISHOP	✓	
STEVE DOHERTY	✓	
SHARON ESTRADA	✓	
MIKE HALLIGAN		✓
RIC HOLDEN	✓	
REINY JABS	✓	
WALT MC NUTT	✓	
LORENTS GROSFIELD, VICE CHAIRMAN	✓	
BRUCE CRIPPEN, CHAIRMAN	✓	
	9	1

SEN:1995
wp:rlclvote.man
CS-11

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3-27-97

NAME	PRESENT	ABSENT	EXCUSED
SUE BARTLETT	✓		
AL BISHOP	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
WALT MC NUTT	✓		
LORENTS GROSFIELD, VICE CHAIRMAN	✓		
BRUCE CRIPPEN, CHAIRMAN	✓		

SEN:1995
wp.rollcall.man
CS-09

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 3/27/97
BILL NO. HB100

Amendments to House Bill No. 100
Second Reading Copy - Second House

For the Committee on Judiciary

Prepared by Susan Byorth Fox
March 26, 1997

1. Page 2, line 12 through page 3, line 26.
Strike: subsection (4) in its entirety
Insert: "(4) (a) On the fourth or subsequent conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, the person is guilty of a felony and shall be punished by:

(i) imprisonment for a term of not less than 6 months or more than 13 months, the imposition or execution of which may not be suspended, and the person is not eligible for parole;

(ii) a supervised release term of not less than 1 year or more than 4 years; and

(iii) a fine of not less than $1,000 or more than $10,000.

(b) The court shall, subject to sentencing restrictions:

(i) specify one of the following facilities as the initial place in which the term of imprisonment must be served:

(A) a state prison;

(B) a regional correctional facility;

(C) a county jail;

(D) a boot camp, provided the prior approval of the department of corrections has been obtained; or

(E) a prerelease center, provided the prior approval of the department of corrections has been obtained; or

(ii) sentence the person to the department of corrections for placement in an appropriate correctional institution or program; and

(iii) order a person who is financially able to pay the costs of imprisonment and supervised release under this section and of the information course and treatment under subsection (5).

(c) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of supervised release. Reasonable restrictions or conditions may include:

(i) conditions for supervised release;

(ii) payment of a fine as provided in 46-18-231;

(iii) payment of costs as provided in 46-18-232 and 46-18-233;

(iv) payment of costs of court-appointed counsel as provided in 46-8-113;

(v) community service;

(vi) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society;

(vii) treatment in a state-approved public or private treatment facility; or

(viii) any combination of the restrictions or conditions listed in subsections (4)(c)(i) through (4)(c)(vii).

(d) (i) Following initial placement of a defendant in a

boot camp or a prerelease center under subsection (4)(b)(i), the department of corrections may, at its discretion, place the offender in another facility or program.

(ii) The term of supervised release must be supervised by the department of corrections, which may order all or any portion of the supervised release term to be served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation, apply to the supervised release.

(e) If a violation of the restrictions or conditions of the supervised release is established, the court may continue the period of supervised release or may require the defendant to serve the remainder of the supervised release sentence in one of the facilities set forth in subsection (4)(b)(i) or (4)(b)(ii). The court may credit the remainder of the supervised release or the time to be served in a facility set forth in subsection (4)(b)(i) or (4)(b)(ii) with all or part of the time already served on supervised release.""

2. Page 6, line 9 through page 7, line 22.
Strike: subsection (4) in its entirety
Insert: "(4) (a) On the fourth or subsequent conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, the person is guilty of a felony and shall be punished by:

(i) imprisonment for a term of not less than 6 months or more than 13 months, the imposition or execution of which may not be suspended, and the person is not eligible for parole;

(ii) a supervised release term of not less than 1 year or more than 4 years; and

(iii) a fine of not less than $1,000 or more than $10,000.

(b) The court shall, subject to sentencing restrictions:

(i) specify one of the following facilities as the initial place in which the term of imprisonment must be served:

(A) a state prison;

(B) a regional correctional facility;

(C) a county jail;

(D) a boot camp, provided the prior approval of the department of corrections has been obtained; or

(E) a prerelease center, provided the prior approval of the department of corrections has been obtained; or

(ii) sentence the person to the department of corrections for placement in an appropriate correctional institution or program; and

(iii) order a person who is financially able to pay the costs of imprisonment and supervised release under this section and of the information course and treatment under subsection (6).

(c) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of supervised release. Reasonable restrictions or conditions may include:

(i) conditions for supervised release;

(ii) payment of a fine as provided in 46-18-231;

(iii) payment of costs as provided in 46-18-232 and 46-18-233;

(iv) payment of costs of court-appointed counsel as provided in 46-8-113;

(v) community service;

(vi) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society;

(vii) treatment in a state-approved public or private treatment facility; or

(viii) any combination of the restrictions or conditions listed in subsections (4)(c)(i) through (4)(c)(vii).

(d) (i) Following initial placement of a defendant in a boot camp or a prerelease center under subsection (4)(b)(i), the department of corrections may, at its discretion, place the offender in another facility or program.

(ii) The term of supervised release must be supervised by the department of corrections, which may order all or any portion of the supervised release term to be served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation, apply to the supervised release.

(e) If a violation of the restrictions or conditions of the supervised release is established, the court may continue the period of supervised release or may require the defendant to serve the remainder of the supervised release sentence in one of the facilities set forth in subsection (4)(b)(i) or (4)(b)(ii). The court may credit the remainder of the supervised release or the time to be served in a facility set forth in subsection (4)(b)(i) or (4)(b)(ii) with all or part of the time already served on supervised release.""